UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Oakland, California)

JOHNSON CONTROLS, INC.
Employer

and

ARNOLD A. SAN AGUSTIN, an Individual — Case 32-RD-1495
Petitioner

and

INTERNATIONAL UNION, UNITED AUTOMOBILE , AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS AFFILIATE, UNITED AUTO WORKERS, LOCAL 76
Union

DECISION AND DIRECTION OF ELECTION

Johnson Controls, Inc., herein called the Employer, is engaged in various types of business operations, including the manufacturing of seats and other parts for motor vehicles at its Livermore, California facility. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and its affiliate, United Auto Workers, Local 76, herein collectively called the Union, represent a collective-bargaining unit consisting of certain of the Employer's employees at the Livermore facility. Arnold A. San Agustin, herein called the Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as the collective bargaining representative of the employees in the collective-bargaining unit. A

hearing officer of the Board conducted a hearing in this matter on December 13, 2005. The Petitioner participated in the hearing. Although the Employer and the Union were given due notice of the hearing, neither of them appeared at, or participated, in the hearing. I note that no party has raised any arguments or presented any evidence establishing that an election should not be held in this matter, and I have concluded that an election is warranted in this case. The evidence and reasons supporting my decision are set forth below.

THE FACTS[1]

The Employer is a Wisconsin corporation, and its main office is located in Milwaukee, Wisconsin. The Employer is a multi-billion dollar business whose stock is sold on the New York Stock Exchange, and it has numerous facilities located throughout the United States, as well as in 35 other countries.[2] One phase of the Employer's business is the manufacturing of products and systems for automotive vehicles. Indeed, the Employer is one of the world's largest suppliers to the automotive industry and about 30% of its consolidated net sales in 2005 were made to General Motors Corporation, Daimler Chrysler AG and Ford Motor Company[3].

The Petition in this case concerns only the Employer's facility in Livermore, California, at which the Employer manufactures automobile seats and other parts for use in the interiors of motor vehicles. The automobile seats the Employer manufactures at the

[1] As noted above, the Employer did not make an appearance or present evidence at the hearing. I have therefore taken administrative notice of the Employer's Form 10-K for the fiscal year ending on September 30, 2005, which it filed with the Securities and Exchange Commission shortly before the hearing in this case. The Form 10-K is found on the website of the Securities and Exchange Commission. The facts concerning the Employer's operations are based on the information provided in the Form 10-K and on the testimony of the Petitioner, Arnold A. San Augustine.

[2] The Employer's net sales for fiscal year 2005 were over 27 billion dollars.

[3] In fiscal year 2005, approximately 42% of the Employer's sales to these manufacturers originated in the United States, 45% were based in Europe and 13% were attributable to other foreign markets.

Livermore facility are sold to New United Motor Manufacturing, which builds Toyota vehicles at a plant in Fremont, California.[4]

On about December 3, 2004, pursuant to a third party card check, the Employer recognized the Union as the collective bargaining representative of the employees in the following unit:[5]

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Livermore, California facility located at 6383 Las Positas, Livermore California 94551, BUT EXCLUDING all office clerical employees, confidential employees, professional employees, guards, all other employees, guards, and supervisors as defined in the Act.

Since the recognition, the record shows that the parties have engaged in bargaining. The parties reached tentative agreement on a collective bargaining agreement in October 2005 and again in December 2005. In each instance, the agreement was not to become effective unless it was ratified by the unit employees. The Union distributed copies of the proposed agreements before holding the ratification votes, however, the employees voted not to ratify either of the agreements.[6]

ANALYSIS

It is well established that in a decertification election the bargaining unit in which the election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *W.T. Grant Co.*, 179 NLRB 670 (1969); *Bell & Howell Airline*

[4] In addition to the above referenced evidence regarding the Employer, I take administrative notice of the Board's decision in Johnson Controls, Inc., Systems And Services Division, 322 NLRB 669 (1996), in which the Board concluded that the Employer is an employer engaged in commerce as defined in the Act.

[5] The record shows that in a prior case, Case 32-RC-1493, the Union argued that that petition should be dismissed based on a recognition bar. In this case, the Union did not participate in the hearing and did not present evidence or argue that there is a recognition bar. In these circumstances, I need not address that issue.

[6] In addition to the evidence showing that the Union represented the employees in the unit for purposes of collective bargaining, and let the unit employees attend Union meetings and participate in contract ratification votes, I take administrative notice that in Newcor Bay City Division Of Newcor, Inc., 345 NLRB No. 104 (2005) the Board held that the International Union, United Automobile, Aerospace And Agricultural Implement Workers Of America is a labor organization. Similarly, in International Union, United Automobile, Aerospace And Agricultural Implement Workers Of America, United Auto Workers Union, Local 76, 277 NLRB 711 (1985) the Union was found to be a labor organization.

Service Co., 185 NLRB 67 (1970); *Mo's West*, 283 NLRB 130 (1987). Here the unit in which the election is sought was amended at the hearing, and the amended unit is co-extensive with the certified unit. As there are no other issues or reasons to preclude processing the petition in this case, I have decided to direct an election in this case.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Union claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6*)* and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Livermore, California facility located at 6383 Las Positas, Livermore California 94551, BUT EXCLUDING all office[7] clerical employees, confidential employees, professional employees, guards, all other employees, guards, and supervisors as defined in the Act.

[7] In the transcript, it shows that the Petitioner, when amending the petition at the hearing, used the term "official clerical employees" rather than the term "office clerical employees." I have concluded that either the court reporter misheard the Petitioner or that the Petitioner mis-spoke when referring to the clerical employees. In any event, I have concluded that the Petitioner was seeking to exclude office rather than official clerical employees. I also note that the Petitioner agreed to proceed to an election in whatever unit I found appropriate.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and its affiliate, United Auto Workers, Local 76. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company,* 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). The undersigned shall make the list available to the Petitioner when the undersigned shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **December 28, 2005.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in

which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **January 4, 2005.** The request may **not** be filed by facsimile. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in

doing so. Guidance regarding electronic filing can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

Dated: December21, 2005

Alan B. Reichard, Regional Director
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